

LATHAM & WATKINS LLP
Belinda S Lee (Cal. Bar No. 199635)
belinda.lee@lw.com
Sarah M. Ray (Cal. Bar No. 229670)
sarah.ray@lw.com
Aaron T. Chiu (Cal. Bar No. 287788)
aaron.chiu@lw.com
505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
Telephone: +1.415.391.0600

Attorneys for Defendant Apple Inc.

HAGENS BERMAN SOBOL SHAPIRO LLP
Steve W. Berman (pro hac vice)
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206) 623-7292
steve@hbsslaw.com

Ben M. Harrington (SBN 313877)
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
benh@hbsslaw.com

SPERLING & SLATER, LLC
Eamon P. Kelly (*pro hac vice*)
Joseph M. Vanek (*pro hac vice*)
Jeffrey Bergman (*pro hac vice*)
55 W. Monroe Street, 32nd Floor
Chicago, IL 60603
Telephone: (312) 676-5845
ekelly@sperling-law.com
jvanek@sperling-law.com
jbergman@sperling-law.com

Attorneys for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

AFFINITY CREDIT UNION,
GREENSTATE CREDIT UNION, and
CONSUMERS CO-OP CREDIT UNION,

Plaintiffs,

V.

APPLE INC.

Defendant.

CASE NO. 4:22-cv-04174-JSW

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

Date: June 21, 2024

Time: 11:00 a.m.

Place: Courtroom 5, 2nd Floor, Oakland

Judge: The Honorable Jeffrey S. White

1 Pursuant to this Court's November 29, 2023 Order (ECF No. 68) and Local Rule 16-10(d)
 2 of the Northern District of California, Plaintiffs Affinity Credit Union, GreenState Credit Union,
 3 and Consumers Credit Union f/k/a Consumers Co-Op Credit Union (together, "Plaintiffs"), and
 4 Defendant Apple Inc. ("Apple") submit this Joint Case Management Conference Statement, which
 5 provides updates since the last Joint Case Management Conference Statement submitted by the
 6 Parties on November 17, 2023 (ECF No. 67).

7 **1. DISCLOSURES**

8 The Parties exchanged initial disclosures on December 8, 2023, pursuant to Fed. R. Civ.
 9 P. 26. The Parties disclosed numerous individuals—including third parties—likely to have
 10 discoverable information, as well as documents, electronically stored information, and tangible
 11 things that are in the Parties' possession, custody, or control, that the Parties may use to support
 12 their claims and defenses.

13 **2. DISCOVERY TO DATE**

14 The Parties are working diligently toward the June 20, 2024 deadline for the substantial
 15 completion of fact discovery.

16 Apple's Non-Custodial Documents and Data Production. Plaintiffs served their first set of
 17 requests for the production of documents ("RFPs") on November 17, 2023, all of which were non-
 18 custodial document or data requests. Apple served objections and responses to those RFPs on
 19 December 18, 2023, and, to-date, Apple has produced over 345,913 pages of documents (reflecting
 20 over 44,000 documents) in response to those RFPs. Apple expects to substantially complete its
 21 additional production of the aggregated Apple Pay transaction data that Apple keeps in the
 22 ordinary course of business by the June 20, 2024 deadline for substantial completion of document
 23 productions. As Apple informed Plaintiffs during a meet-and-confer on April 24, 2024,
 24 disaggregated Apple Pay transaction data is available from third parties.

25 Apple's Custodial Documents. Plaintiffs served custodial RFPs on February 22, 2024, and
 26 Apple served responses and objections to those RFPs on March 25, 2024. The Parties have
 27 diligently met-and-conferred every week, including to narrow Plaintiffs' second set of RFPs.
 28 Apple has proposed to produce documents from six custodians in response to those RFPs and is

1 completing the custodial review of these six custodians' documents pursuant to the search terms
 2 proposed by Apple. Plaintiffs have proposed revisions to those search terms along with six
 3 additional custodians, one of whose custodial files Apple has agreed to produce. As noted below,
 4 the Parties continue to negotiate potential additional custodians and revised search terms.
 5 Naturally, the timeline for the completion of Apple's custodial document production depends on
 6 any agreement the Parties ultimately reach about the scope of collection. Even absent this
 7 agreement, Apple's custodial documents have been collected, are being reviewed, and will be
 8 produced promptly on an ongoing basis once review is completed.

9 Plaintiffs' Documents and Data. Apple served its first set of RFPs on Plaintiffs on
 10 January 23, 2024, and Plaintiffs served objections and responses to those RFPs on February 22,
 11 2024. Plaintiffs anticipate making initial productions in the coming days. Plaintiffs proposed a
 12 total of eight custodians along with search terms to run on those custodians' ESI. Apple has not
 13 yet proposed any additional custodians, and the Parties are engaged in ongoing discussions
 14 regarding Plaintiffs' proposed search terms. Plaintiffs GreenState Credit Union and Consumers
 15 Co-op Credit Union believe they are on track to meet the deadline of June 20, 2024, to substantially
 16 complete production of responsive and relevant documents. Documents from Plaintiff Affinity
 17 Credit Union are in the process of being collected, and will be reviewed, and produced promptly
 18 once collection is completed.

19 Ongoing Meet-and-Confers. The Parties have worked cooperatively to advance discovery,
 20 including by holding weekly meet-and-confer calls to discuss outstanding issues. Although the
 21 Parties continue to work in good faith to progress fact discovery, they have not yet been able to
 22 reach resolution on a few topics that may eventually necessitate Court resolution, including: (1) the
 23 five additional Apple custodians that Plaintiffs have requested, as well as the custodians from
 24 whom Plaintiffs will search for responsive documents; (2) the search terms Apple and Plaintiffs
 25 will use to cull their respective responsive documents; and (3) the geographic scope of Apple's
 26 production.

27 //

28 //

1 Case Schedule.

2 Plaintiffs' position: The Parties must substantially complete document *and* data
 3 productions to meet the deadline for the “Substantial Completion of Production of *Documents and*
 4 *Data*”—producing transactional data is not enough. Because Apple has stated below that it will
 5 not substantially complete document productions by June 20, 2024, Plaintiffs anticipate the need
 6 to modify the class certification schedule.

7 Apple's position: Apple made its first production of documents on April 17, 2024,
 8 and has made three additional productions on a rolling basis since then. To date, Plaintiffs have
 9 produced no documents or data, and at least one Plaintiff (Affinity Credit Union) has foreshadowed
 10 that it will not meet the June 20, 2024 substantial completion deadline. However, Apple believes
 11 there is no need to modify the class certification schedule at this time, in particular because Apple
 12 expects to substantially complete its production of the Apple Pay transaction data that it keeps in
 13 the ordinary course of business by June 20, 2024 and is on track to substantially complete its
 14 production of non-custodial documents and the documents from its six custodians promptly after
 15 that date. Plaintiffs' motion for class certification is not due for 2.5 months (on September 6,
 16 2024), and Apple believes the Parties should continue to work diligently towards meeting that
 17 deadline before altering the Court's schedule for this case.

18 **3. SETTLEMENT AND ADR**

19 The Parties have not yet conferred regarding settlement or engaged in ADR, and the Parties
 20 believe that ADR or settlement efforts are premature at this point. The Parties filed ADR
 21 Certification forms on April 5, 2023. *See* ECF Nos. 56, 58–60.

22

23

[Signatures on following page]

24

25

26

27

28

1 Dated: June 14, 2024

Respectfully submitted,

2 **LATHAM & WATKINS LLP**

3 By: /s/ Belinda S Lee
Belinda S Lee

4 Belinda S Lee (Cal. Bar No. 199635)
5 *belinda.lee@lw.com*
6 Sarah M. Ray (Cal. Bar No. 229670)
7 *sarah.ray@lw.com*
8 Aaron T. Chiu (Cal. Bar No. 287788)
9 *aaron.chiu@lw.com*
10 505 Montgomery Street, Suite 2000
11 San Francisco, California 94111-6538
12 Telephone: +1.415.391.0600

13 *Attorneys for Defendant Apple Inc.*

14 Dated: June 14, 2024

15 Respectfully submitted,

16 **HAGENS BERMAN SOBOL SHAPIRO LLP**

17 By /s/ Ben M. Harrington
18 Ben M. Harrington (SBN 313877)
19 715 Hearst Avenue, Suite 202
20 Berkeley, CA 94710
21 Telephone: (510) 725-3000
22 Facsimile: (510) 725-3001
23 benh@hbsslaw.com

24 Steve W. Berman (*pro hac vice*)
25 1301 Second Avenue, Suite 2000
26 Seattle, WA 98101
27 Telephone: (206) 623-7292
28 Facsimile: (206) 623-0594
steveb@hbsslaw.com

29 **SPERLING & SLATER, LLC**

30 Eamon P. Kelly (*pro hac vice*)
31 Joseph M. Vanek (*pro hac vice*)
32 Jeffrey Bergman (*pro hac vice*)
33 55 W. Monroe Street, 32nd Floor
34 Chicago, IL 60603
35 Telephone: (312) 676-5845
36 Facsimile: (312) 641-6492
37 *ekelly@sperling-law.com*
38 *jvanek@sperling-law.com*
39 *jbergman@sperling-law.com*

40 Phillip Cramer (*pro hac vice*)
41 1221 Broadway, Suite 2140
42 Nashville, TN 37203

1 Telephone: (312) 641-3200
2 Facsimile: (312) 641-6492
3 pcramer@sperling-law.com

4

5 *Attorneys for Plaintiffs and the Proposed Class*

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

SIGNATURE ATTESTATION

I, Belinda S Lee, am the ECF User whose identification and password are being used to file the foregoing Joint Case Management Conference Statement. Pursuant to Local Rule 5-1(i)(3) regarding signatures, I attest that concurrence in the filing of this document has been obtained.

Dated: June 14, 2024

Respectfully submitted,

LATHAM & WATKINS LLP

By: /s/ Belinda S Lee
Belinda S Lee
Attorney for Defendant Apple Inc.